

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

PRO NITRO, LLC,

Plaintiff,

vs.

PRO RACING FUELS, LLC, et al.,

Defendants.

3:06-CV-0119-HDM (VPC)

**REPORT AND RECOMMENDATION  
OF U.S. MAGISTRATE JUDGE**

**I. Introduction**

This Report and Recommendation is made to the Honorable Howard D. McKibben, United States District Judge. In accordance with 28 U.S.C. § 636(e) and 28 U.S.C. § 636(b)(1)(C), this court is certifying the facts to the District Court for consideration and issuance of an order adjudging James MacMonagle, Linda MacMonagle, and Ward MacMonagle in contempt of court.

**II. Background and Discussion**

On May 8, 2007, this court issued an order (#119) setting a discovery hearing for June 1, 2007, regarding the plaintiff's unilateral LR 26-1 discovery plan. *Pro se* defendants were ordered to appear in person or provide to the court a telephone number at which they could be reached for the hearing. *Id.*

On June 1, 2007, the discovery hearing was held. *Pro se* defendants James MacMonagle, Linda MacMonagle, and Ward MacMonagle ("the MacMonagles") did not appear in person or telephonically (#122). This court ordered that the clerk issue an order to show cause why the MacMonagles should not be held in contempt of court for failure to comply with the court's order. *Id.*

On June 6, 2007, this court issued its order to show cause and set the hearing for July 10, 2007 (#123). The court further ordered the U.S. Marshal to personally serve the MacMonagles at their last known address: 2451 Lockhead Way, Carson City, Nevada 89706. *Id.* The order was also served on the MacMonagles via U.S. Mail. The U.S. Marshal filed unexecuted returns of services for the MacMonagles stating that the MacMonagles were no longer at the address listed above (#124).<sup>1</sup> The MacMonagles failed to appear in court on July 10, 2007 pursuant to the order to show cause (#127).

**III. Conclusion**

In accordance with 28 U.S.C. § 636(e), this court is certifying the facts to the District Court for consideration and recommends the issuance of an order adjudging James MacMonagle, Linda MacMonagle, and Ward MacMonagle in contempt of court.

The parties should be aware of the following:

1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule IB 3-2 of the Local Rules of Practice, specific written objections to this Report and Recommendation within ten (10) days of receipt. These objections should be titled “Objections to Magistrate Judge’s Report and Recommendation” and should be accompanied by points and authorities for consideration by the District Court.

2. That this Report and Recommendation is not an appealable order and that any notice of appeal pursuant to Rule 4(a)(1), Fed. R. Civ. P., should not be filed until entry of the District Court’s judgment.

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<sup>1</sup>Following the hearing, the orders to show cause were also returned by the U.S. Mail as undeliverable (#s 133, 134 & 141).

